

BEFORE THE CITY COUNCIL OF THE CITY OF ORINDA

In the Matter of:

Uncodified Urgency Interim Ordinance
Regulating Accessory Dwelling Units Between
January 1, 2020 and Adoption of Regular
Codified Accessory Dwelling Unit Ordinance.

Ordinance 19-11

The City Council of the City of Orinda DOES ORDAIN as follows:

SECTION 1. FINDINGS AND DECLARATIONS.

In support of the enactment of this urgency ordinance, the City Council of the City of Orinda finds and declares that:

1. On March 6, 2018, the City Council adopted Ordinance 18-02, which amended the Orinda Municipal Code to regulate the development of accessory dwelling units within the City's residential zoning districts (see, e.g., Orinda Municipal Code section 17.3.4). Ordinance 18-02 was drafted in compliance with state regulation of accessory dwelling units at the time.
2. On October 6, 2019, Governor Newsom signed into law AB 68, SB 13, and AB 881 regarding accessory dwelling units. These bills modify California Government Code Section 65852.2 and become effective January 1, 2020. Pursuant to these amendments, Orinda Municipal Code section 17.3.4 will become "null and void" on January 1, 2020 because it contains terms in conflict with the new law.
3. Without a compliant accessory dwelling unit ordinance in place on January 1, 2020, the City would no longer be able to impose its general development standards and use requirements—such as those related to parking, building heights, setbacks, and maximum size—on certain types of accessory dwelling units. In addition, the City would be unable to impose reasonable size and height limitations on detached accessory dwelling units authorized pursuant to state law.
4. Considering the above, the City Council finds that unregulated accessory dwelling units pose a current and immediate threat to the public health, safety, and welfare. State law, if unmodified by a compliant City ordinance, would allow accessory dwelling units larger than 1,200 square feet and taller than existing height limitations, which would be incompatible with Orinda's residential neighborhoods and a source of aesthetic and visual blight. In addition, state law, if unmodified by a compliant City ordinance, would allow accessory dwelling units closer to property lines, resulting in land use conflicts and lack of residential privacy and quiet enjoyment. Finally, state law, if unmodified by a compliant City ordinance, would allow accessory dwelling units to be developed without complying with the City's water channel setbacks and ridgeline and

environmental preservation overlays, resulting in potential harm to important natural resources. Once such units are entitled, state law would prohibit the City from remedying the nonconforming uses, even once the City adopts a compliant ordinance. This urgency ordinance, by adopting reasonable regulations for accessory dwelling units, is necessary to protect against these threats while the City evaluates potential modifications to its existing accessory dwelling unit regulations to come into conformance with state law.

5. Considering the public health, safety, and welfare threat posed by some accessory dwelling units, the City is contemplating amendments to its zoning code. The City intends to study and adopt those potential amendments as soon as reasonably feasible.
6. California Government Code section 36937(b) provides that an ordinance may take effect immediately, if it is an ordinance for the immediate preservation of the public peace, health or safety, and if it contains a declaration of the facts constituting the urgency, and if it is passed by a four-fifth vote of the City Council.
7. This uncodified ordinance is intended to be compliant with California Government Code section 65852.2, as amended effective January 1, 2020, which regulates accessory dwelling units.
8. Based on the foregoing, the City Council finds that the immediate preservation of the public health, safety, and welfare requires that this ordinance be enacted as an urgency ordinance pursuant to California Government Code Section 36937(b), and take effect immediately upon adoption. Therefore, this ordinance is necessary for the immediate preservation of the public peace, health, safety, and welfare and its urgency is hereby declared.

SECTION 2.

The City Council hereby adopts the regulations attached as Exhibit A.

SECTION 3.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 4.

This ordinance is consistent with the Orinda General Plan.

SECTION 5.

The City Council finds that this ordinance is exempt from the California Environmental Quality Act under Public Resources Code section 21080.17, as it implements the provisions of Government Code section 65852.2.

SECTION 6.

The City Clerk shall publish a summary of this ordinance within fifteen (15) days after adoption and shall post this ordinance in three public places in the City.

SECTION 7.

This ordinance is adopted as an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of Government Code Section 36937(b) and therefore shall be passed immediately upon introduction and shall become effective immediately. This ordinance is intended to be superseded by a regular codified ordinance later adopted by the City.

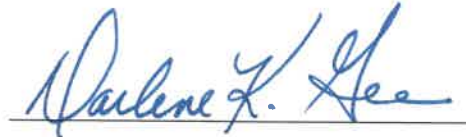
The foregoing ordinance was adopted at a Special Continued meeting of the City Council of the City of Orinda held on December 19, 2019 by at least four-fifths (4/5) vote of the City Council as follows:

AYES: COUNCILMEMBERS: Gee, Kosla, Miller, Worth

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: Fay

ABSTAIN: COUNCILMEMBERS: None



Darlene Gee, Mayor

ATTEST:



Sheri Marie Smith, City Clerk

Exhibit A - Accessory Dwelling Unit (ADU) Regulations

A. Purpose. The purpose of this regulation is to comply with state law regarding accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) [California Government Code Sections 65852.2 and 65852.22].

B. Streamlined ADUs. Pursuant to California Government Code Section 65852.2(e), the City shall approve the following streamlined ADUs if the specified development standards and use restrictions are met:

1. All Streamlined ADUs and JADUs.

a. The unit is located in an RVL-E, RVL, RL-40, RL-20, RL-15, RL-12, RL-10, RL-6, PD, or RM zoning district.

b. The unit complies with applicable building codes and health and safety regulations; however, the unit is not required to provide fire sprinklers if fire sprinklers are not required for the single-family dwelling.

c. The unit may be rented in full or in part for the purpose of overnight lodging for terms of thirty or more consecutive days, but it shall not be rented for overnight lodging for shorter terms. Neither the single-family dwelling nor the ADU or JADU shall be sold or otherwise conveyed separately from the other unit, except pursuant to California Government Code Section 65852.26

d. If the unit is connected to an onsite water system, a percolation test has been completed within the last five (5) years, or if the percolation test has been recertified, within the last ten (10) years.

2. Within Existing Space (Single-Family) – ADUs and JADUs.

a. The lot on which the ADU or JADU is located contains an existing or proposed single-family dwelling.

b. Only one (1) ADU or JADU is permitted per lot unless one (1) JADU is permitted pursuant to this Subsection (B)(2) and one (1) ADU is permitted pursuant to Subsection (B)(3).

c. The ADU or JADU has exterior access independent from the existing residence.

d. The existing single-family dwelling or accessory structure has side and rear setbacks sufficient for fire safety. If the existing residence or structure complies with the City's setback requirements as described in Chapter 17.4, it shall automatically meet this standard.

e. If an ADU is proposed, it is within the proposed space of a single-family dwelling, the existing space of a single-family dwelling or accessory structure, or requires an addition of no more than 150 square feet to an existing accessory structure to accommodate ingress and egress.

f. If a JADU is proposed, it complies with the requirements of California Government Code Section 65852.22.

3. Detached, New Construction (Single-Family) – ADUs

a. The lot on which the ADU is located contains an existing or proposed single-family dwelling.

b. The lot on which the ADU is located does not contain another ADU, but may contain a JADU.

c. The ADU is detached from the single-family dwelling.

- d. The ADU is new construction.
 - e. The ADU is located at least four (4) feet from the side and rear lot lines, is no greater than eight-hundred (800) adjusted square feet in floor area, and has a height of no more than sixteen (16) feet.
4. Within Existing Space (Multifamily) – ADUs
- a. The lot on which the ADU is located contains an existing multifamily dwelling.
 - b. The ADU is located within a portion of the multifamily dwelling structure that is not used as livable space.
 - c. The total number of ADUs within the dwelling structure does not exceed twenty-five (25) percent of the existing number of primary dwelling units within the structure, provided that all multifamily dwelling structures shall be permitted at least one (1) ADU pursuant to this Subsection if the other standards are met.
5. Detached, New Construction (Multifamily) – ADUs
- a. The lot on which the ADU is located contains an existing multifamily dwelling.
 - b. The ADU is detached from the multifamily dwelling.
 - c. The ADU is located at least four (4) feet from the side and rear lot lines and has a height of no more than sixteen (16) feet.
 - d. No more than two (2) ADUs shall be permitted per lot pursuant to this Subsection.
- C. All Other ADUs. Any ADU that does not meet the standards for streamlined ADUs in Subsection (B) shall meet the following development standards and use restrictions:
- 1. The ADU is located in an RVL-E, RVL, RL-40, RL-20, RL-15, RL-12, RL-10, RL-6, PD, or RM zoning district.
 - 2. The lot on which the ADU is located contains an existing or proposed single-family dwelling.
 - 3. The lot on which the ADU is located does not contain another ADU or JADU.
 - 4. The ADU meets all other applicable requirements of this code that do not involve discretionary review including, but not limited to, building height, setback, water channel setback, tree removal, ridgeline and environmental preservation overlay, payment of applicable fees, and building code requirements; however:
 - a. Passageways. To the extent required by California Government Code Section 65852.2, no passageway is required in conjunction with the construction of an ADU.
 - b. Setbacks.
 - i. No setback is required for an ADU located within existing living area or an existing accessory structure, or an ADU that replaces an existing structure and is located in the same location and to the same dimensions as the structure being replaced.
 - ii. For all other ADUs, the required setback from side and rear lot lines shall be no more than four (4) feet.
 - c. Building Heights. In the area between the setbacks applicable to the primary dwelling and the setbacks applicable to the ADU, the ADU shall

be limited to sixteen (16) feet in height. Otherwise, the height limits applicable to the primary dwelling apply.

d. Fire Sprinklers. The ADU is not required to provide fire sprinklers if fire sprinklers are not required for the single-family dwelling.

e. Parking.

i. One (1) all-weather surface, off-street parking space measuring at least nine (9) feet by nineteen (19) feet shall be provided for the ADU.

ii. The required parking space may be located as a tandem space in an existing driveway or in the required setbacks. "Tandem parking" means that two (2) or more automobiles are parked on a driveway or in any other location on a lot, lined up behind one another.

iii. The above parking requirements shall not apply:

A. To an ADU that is located within one-half (0.5) mile walking distance of public transit, defined as an existing BART or public bus stop;

B. To an ADU that is located within an architecturally and historically significant historic district;

C. To an ADU that is part of a proposed or existing primary dwelling unit or accessory structure;

D. When on-street parking permits are required but not offered to the occupant of the ADU; or

E. To an ADU that is located within one (1) block of the designated pick-up or drop-off location of a car-share vehicle, where such vehicle is owned by a car-sharing company.

f. Skirt walls. Any skirt wall developed in conjunction with an ADU shall be less than six (6) feet in height.

5. The ADU may be rented, but it shall not be sold or otherwise conveyed separate from the single-family dwelling except pursuant to California Government Code Section 65852.26.

6. Maximum size. An ADU shall meet all of the following requirements:

a. Pursuant to California Government Code Section 65852.2(c), the floor area shall not exceed eight hundred and fifty (850) adjusted square feet (studio or one bedroom) or one thousand (1,000) adjusted square feet (more than one bedroom); and

b. Compliance with the floor area requirements in Section 17.6.2 of the Orinda Municipal Code and any other applicable maximum size requirements (e.g., requirements in any applicable development agreement), provided that such requirements shall not be used to reduce the ADU below eight hundred (800) adjusted square feet.

c. For determining compliance with this Subsection, floor area shall be calculated pursuant to Section 17.6.3 and Section 17.6.4 of the Orinda Municipal Code.

D. Within sixty (60) days of receipt of a complete application, the Planning Director shall ministerially process for approval any application for a building permit for an ADU or JADU that meets all the criteria in this regulation.

E. Combination Proposals.

1. When an ADU is proposed in conjunction with—but it can be constructed independent of—another proposal for which City approval is required under this Code (e.g., new garage, new single-family residence, substantial addition to an existing residence), the following options apply:

a. The applicant may elect to have the City process the ADU separate from and concurrently with the other proposal(s). If the applicant makes this election, the streamlining described in this regulation would apply to the ADU and the City's otherwise applicable regulations would apply to the other proposal(s).

b. The applicant may elect to submit the ADU and other proposal(s) for combined review by the City. If the applicant makes this election, he or she voluntarily foregoes the regulations described in this regulation and the City's otherwise applicable regulations apply.

2. When an ADU is proposed in conjunction with—and it cannot be constructed independent of—another proposal for which City approval is required under this Code (e.g., new garage, new single-family residence, substantial addition to an existing residence), the following options apply:

a. The applicant may elect to have the City process the ADU separate from the other proposal(s). If the applicant makes this election, the streamlining described in this regulation would apply to the ADU proposal after the applicant obtains City approval for the other proposal(s) on which ADU construction depends.

b. The applicant may elect to submit the ADU and other proposal(s) for combined review by the City. If the applicant makes this election, he or she voluntarily foregoes the regulations described in this regulation and the City's otherwise applicable regulations apply.

3. No certificate of occupancy will be issued for an ADU prior to issuance of a certificate of occupancy for the single-family dwelling.

F. Non-Compliant Proposals. If the above requirements are not met, the proposed ADU cannot be approved under this regulation. Notwithstanding the foregoing, applicants may seek approval of the unit, addition, or renovation under the City's generally-applicable standards and procedures.

E. Converted Parking. Notwithstanding any other provision of this code, when a private garage, carport, or covered parking structure is demolished or converted in conjunction with the construction of an ADU, the spaces are not required to be replaced, as required by California Government Code Section 65852.2(a)(1)(D)(xi).

G. Fees. No impact fees, as defined in California Government Code Section 65852.2(f)(3)(B), shall be imposed on ADUs smaller than seven hundred and fifty (750) adjusted square feet. Impact fees for all other ADUs shall be charged proportionately in relation to the square footage of the primary dwelling unit.

H. Existing Accessory Dwelling Unit. An existing ADU may be enlarged or modified only in accordance with the requirements of this regulation.

I. Density. To the extent required by California Government Code Section 65852.2, an ADU built in conformance with this regulation does not count toward the allowed density for the lot upon which the ADU is located.

J. General Plan and Zoning Designations. ADUs are a residential use that is consistent with the existing general plan and zoning designations.